

August 1, 2016

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**By Electronic Filing**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Business Data Services In an Internet Protocol Environment;*  
*Special Access For Price Cap Local Exchange Carriers,*  
WC Docket Nos. 16-143 & 05-25; RM-10593 –  
Notice of Ex Parte Presentations

Dear Ms. Dortch:

On Thursday, July 28, 2016, Mike Skrivan of FairPoint Communications and I briefed the following Commission personnel on FairPoint's position in the above-captioned proceedings: Claude Aiken, Amy Bender, Nick Degani, Travis Litman, Stephanie Weiner, Matt DelNero, Deena Shetler, Bill Dever, Bill Kehoe, Bill Layton, Eric Ralph and David Zesiger. The substance of FairPoint's presentation is briefly summarized below.

FairPoint is a midsize telephone company without affiliated mobile telecommunications operations. In FairPoint's price cap local exchange carrier ("LEC") territories in Maine, New Hampshire and Vermont (the northern New England or "NNE" service areas), FairPoint is facing robust and growing competition for business data services ("BDS"), steady or increasing operational costs, and declining revenues from switched access, special access, and universal service support. While revenues from Ethernet services is growing, the market is highly competitive and FairPoint's additional Ethernet revenues are not sufficient to replace the lost revenues from other services. At the same time, FairPoint is regulated as the telecommunications service provider of last resort ("POLR") with no right to reduce or discontinue any regulated service in unprofitable parts of its service territory, nor any ability to raise rates to recoup the company's forward-looking costs. In recent years, parts of FairPoint's service territory have become unprofitable, with negative return on investment. Under these pressures, FairPoint has focused on productivity, but has not recently experienced productivity

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gains. It cannot afford across-the-board rate reductions in special access and other business services, whether styled as a “productivity dividend” or otherwise. Such reductions very likely would cut into FairPoint’s capital expenditures in the rural parts of its price cap territories, and also discourage other service providers from offering BDS in those areas.

FairPoint objects to the premise of the Further Notice that all price cap companies possess market power in the BDS sector. No evidence of such market power has been offered -- not in FairPoint’s NNE territory at any rate. The record demonstrates neither control of bottleneck facilities by the incumbent LEC nor the ability to raise prices. In fact, FairPoint’s prices and revenues consistently have declined over a period of years, while the overall market has grown, and customers increasingly have migrated to higher-bandwidth and more advanced services such as Metro Ethernet. Such trends support FairPoint’s contention that the market for BDS is quite competitive and entry barriers are low. The facts on the ground bear this out -- cable broadband operators, competitive fiber-based LECs, and others have entered FairPoint’s service territories and gained substantial market share.

To the extent that a price cap LEC enjoys a monopoly position in any part of its price cap territory -- and FairPoint does not believe that it does -- the Commission ought to be ensuring that prices are set at levels that would allow the LEC or any competitor to recover its forward-looking costs. Holding prices below cost in high-cost areas only discourages investment and delays competitive market entry.

As the Commission is aware, imposing regulation on an emerging market actually can interfere with competitive forces. If the Commission is serious about appropriately regulating the BDS market, it should take the time to gain a more complete understanding of actual and potential competition, and the trends in prices and service innovation in the market. Failure to do so could have significant consequences for markets where LECs are struggling to maintain service, and actually reduce competition in the markets that have been growing in recent years.

A copy of the enclosed presentation was distributed in these meetings.

Marlene H. Dortch, Secretary

August 1, 2016

Page 3 of 3

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Please direct any questions regarding this matter to me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Karen Brinkmann".

Karen Brinkmann

*Counsel to FairPoint*

Enclosure

cc: Stephanie Weiner  
Claude Aiken  
Amy Bender  
Nick Degani  
Travis Litman

Matt DelNero  
Deena Shetler  
Bill Dever  
Bill Kehoe  
Bill Layton  
Eric Ralph  
David Zesiger